

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT D. SUTTON,

Defendant.

ORDER

01-CR-0032-C-03

Defendant Robert D. Sutton has moved for modification of the restitution order imposed upon him at sentencing. The record shows that he was ordered to pay \$51,702 immediately after sentencing. He contends that because the court did not say anything about his having to make payments on his restitution obligation while he was incarcerated and because it could not permissibly delegate its authority to the Bureau of Prisons to set the amount of restitution he must pay, the court should now set a cap on any payments the Bureau of Prisons can collect from him pursuant to the Inmate Financial Responsibility Program. He alleges that when he arrived at the Federal Correctional Institution at Pollock, Louisiana, he entered into a contract with the Bureau to pay \$25.00 quarterly toward his court ordered restitution obligation and assessments and that the Bureau has now raised the

required payments to \$30 a month. Defendant wants to pay no more than \$25 a month or alternatively, \$50 a quarter. He states that his monthly earnings and income from other sources can range as high as \$128 a month.

The initial and ultimately determinative question is whether this court can exercise jurisdiction over defendant's motion. Although defendant objects to the Bureau of Prisons' actions, his real challenge is to the court's judgment and conviction order and its failure to specify to the Bureau of Prisons the amount of money he should be required to contribute to the reduction of his restitution obligation. He cannot bring a postconviction challenge, however, because he is not seeking release from custody.

A sentencing court has some highly circumscribed authority to modify a payment schedule if a defendant has a "material change of circumstances," 18 U.S.C. § 3664(k), but defendant has not suggested that he falls into this category. He says only that he would prefer to use his prison earnings and funds sent to him from outside the prison to send money to the mother of his children, to buy his children gifts and to buy himself legal materials and personal hygiene items. It does not appear that he is unable to pay the amounts the Bureau of Prisons is requiring of him.

Defendant has not suggested any other basis on which this court could entertain his motion and I have been unable to find any. I conclude, therefore, that this court lacks authority to give defendant the relief he is requesting.

ORDER

IT IS ORDERED that defendant Robert D. Sutton's motion for modification of the court's restitution order is DENIED.

Entered this 15th day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge